RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

April 11, 2025

Submitted via www.fcc.gov/ecfs

Federal Communications Commission
Office of the Secretary
45 L Street NE
Washington, DC 20554

RE: In Re: Delete, Delete, Delete – GN Docket No. 25-133

Dear Secretary Dortch:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments to the Federal Communications Commission (FCC or the Commission) in response to its request for feedback on ineffective and burdensome regulations that should be considered as part of the Commission's efforts to streamline its regulatory regime. *In Re: Delete, Delete, Delete* Docket. *See GN Docket No: 25-133* (March 12, 2025).

By way of background, RILA is a trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the retail industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic retail industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, who together employ over 42 million Americans and account for $2.7 trillion in annual sales and hundreds of thousands of stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA and its members fully support the FCC's continued efforts to protect consumers from unwanted communications, including robotexts and robocalls. Retailers also support the FCC's work to deploy and expand technological innovations in communications. Retailers' ability to effectively communicate with consumers is critical. Today's consumers expect timely delivery of targeted and personalized messages. Such messages may include time-sensitive information that consumers rely on (*e.g.*, prescription orders and/or delays, appointment reminders, receipts, financial information, and delivery updates).

RILA members agree that consumers should have reasonable and clear mechanisms by which they can opt-out out of unwanted automated communications. Retailers acknowledge and appreciate the Commission's recent action[1] delaying the implementation of its Telephone Consumer Protect Act (TCPA) Consent Order (Final Rule or Rule),[2] for a year. And while this action is helpful, we urge the Commission

[1] Order, Fed. Communications Comm'n, CG Docket No. 02-278 (April 7, 2025) *available at* https://docs.fcc.gov/public/attachments/DA-25-312A1.pdf.
[2] See 89 Fed. Reg. 15756 (Feb. 15, 2024) and 89 Fed. Reg. 82518 (Oct. 11, 2024).

to go further to prevent uninformed and unintended opt-outs that will harm consumers and create undue and unreasonable burdens for retailers. RILA respectfully submits these comments to urge the Commission to initiate a new rulemaking proceeding to substantially revise the Final Rule to support consumer control, avoid confusion, and prevent potentially harmful impacts of inadvertent or mistaken revocation of consent.

The Final Rule's stated consumer protection goal is to make it "simpler" for consumers to revoke consent to unwanted robotexts and robocalls. Unfortunately, the Final Rule fails to meet that goal. Instead, it limits retailers' ability to provide consumers with adequate information to make informed decisions and prevents retailers from gaining clarity or context on the specific robotexts or robocalls a customer no longer wants to receive.

The Final Rule's presumption in favor of universal revocation is based on an illogical and unsubstantiated premise that the majority of consumers opting out of one type of communications intend to opt out of *all communications* from the sender regardless of the topic. Also, the Rule requires retailers to infer that a customer has made a universal revocation even though the consumer has taken no action at all, much less given any notice of such intent. This presumption risks unintended adverse consequences for consumers that would prevent them from receiving information they want and rely on.

The below comments underscore the ways in which retailers utilize robotexts and robocalls and how such communications benefit consumers. RILA's comments highlight everyday examples of where consumers may rely on such communications for important and time-sensitive information, and in some cases, mistakenly opt-out of critical communications without sufficient recourse. Additionally, RILA submits comments to identify those areas of the current Final Rule which are aligned with consumer protection goals and should be retained in any future revision.

I. The Unique Relationship Between Retailers and Consumers and the Important Role of Robotexts and Robocalls

The retail industry is hyper competitive. Consumers have many choices when deciding where to shop, and every day they vote with their pocketbooks. Retailers invest significant time and resources on building brand reputation and developing and maintaining strong relationships with their customers. Automated communications, such as robotexts and robocalls, are important tools that retailers use to communicate a wide variety of information to consumers that they want and need.

A. Consumers Rely on Robotexts and Robocalls to Receive Important Health Information from Pharmacies

Consumers have come to rely on robotexts and robocalls for managing their health information. Retail pharmacies utilize these efficient and direct automated communication methods to remind patients about prescription refills, notify them of medication availability, and provide timely and critical updates on any potential drug interactions or recalls. The immediacy and convenience of delivery to consumers' smartphones and other devices ensure that they receive the most up-to-date information. Robotexts and robocalls assist consumers with adhering to their medication schedules and making informed health decisions. This important technology streamlines the communication

process between retail pharmacies and consumers, consequently reducing the chance a consumer will miss a message critical to overall patient care and positive health outcomes.

B. Retailers Protect Consumers' Finances through Robotexts and Robocalls

Many retailers offer their customers retailer branded credit cards, which can be used to make purchases at that retailer. Much like pharmacies, in this scenario retailers also rely on robotexts/robocalls to relay timely and critical information to their customers that serve consumer protection goals. Robotexts and robocalls are essential tools for safeguarding consumers' finances and play a role in enhancing security measures. Retailers employ these automated messaging functions to alert customers to potentially fraudulent activities, unauthorized transactions, and account breaches, where time is of the essence to prevent further financial harm. Realtime notifications of suspicious activities empower consumers to take immediate action to protect their accounts.

Additionally, robotexts/robocalls provide timely payment reminders, updates on account balances, and payment confirmations—all of which assist consumers with managing their finances effectively and efficiently. These communications help consumers remain informed about their financial status and reduce the likelihood of missed payments and late fees.

C. Consumers Expect Accurate and Timely Order Updates and Product Delivery Notifications

In the modern era of smart devices, consumers have grown to expect accurate and timely order updates and product shipment and delivery notifications to efficiently manage their purchases and avoid any inconveniences related to their orders. Retailers have long since implemented automated communication methods to keep customers informed about the status of their orders—from the moment of purchase until the product arrives on their doorsteps.

Retail product order-related notifications include confirmation of order placement, estimated delivery times, shipping updates, packaging tracking information, and alerts of any delays or shipment issues. With customers' increasing reliance on online shopping, these prompt and precise communications allow consumers to plan their schedules accordingly, so they are available to receive their packages when they arrive. This convenient and timely communication has only become more valuable to consumers in recent years as theft of packages has been on the rise – an unfortunate trend that frustrates consumers and can damage retailer-consumer relationships.[3]

Timely updates help consumers feel secure and confident about their retail transactions, knowing they are continuously informed about their order's progress. This level of transparency and reliability in customer communication strengthens trust between consumers and retailers and ultimately enhances the overall shopping experience.

[3] *See e.g.,* "Survey: Porch Pirates Are Undermining Consumer Trust With Retailers," Supply Chain Brain (Sept. 19, 2024), *available at* https://www.supplychainbrain.com/articles/40379-survey-porch-pirates-are-undermining-consumer-trust-with-retailers.

D. Consumers Initiate and Utilize Retailer Engagement through Robotexts and Robocalls to Access Important Information and Services

In addition to product order notifications, consumers and retailers utilize robotexts /robocalls to engage on other important information and services. For example, by opting in to automated communications, consumers can receive personalized promotions, loyalty program updates, and notice of exclusive deals directly on their smart devices. Additionally, consumers can query specific product information, check product stock availability, and even schedule in-store appointments.

Interactive messaging allows consumers to provide retailers with valuable feedback on their shopping experience, participate in customer satisfaction surveys, and contact customer support for assistance. Automated communication ensures seamless and efficient delivery of relevant and helpful information that enhances the convenience and enjoyment of consumers' shopping experiences.

II. The Final Rule is Overly Broad and Undermines Consumers' Ability to Make an Informed Choice about Revoking Consent

Retailers want their customers to have control over what messages and calls they want to receive and fully support the Commission's efforts to enhance consumer control. However, the Final Rule does the exact opposite. Rather than giving consumers more control, it hinders consumers' ability to make informed choices by limiting companies' ability to provide them with accurate and complete information. This limitation coupled with the Rule's presumption in favor of universal revocation will result in confusion, misunderstanding, and ultimately unintended adverse consequences for consumers.

A. The Commission Should Initiate Further Review of the Final Rule During the One Year Pause of the Rule's Enforcement

The issue at stake here is an important one – the ability of consumers to make an informed decision prior to taking action to control the specific messages and calls they want to receive. Detailed in the sections below are multiple examples of the Rule's harmful impact. Given the unintended adverse consequences that will inevitably result if the Final Rule is allowed to go into effect after the conclusions of one year enforcement pause, review and revision of the Rule by the Commission is justified. The one-year enforcement pause allows the Commission time to solicit feedback from stakeholders on the most appropriate way to revise it to eliminate those aspects that impede consumers' ability to make informed choices. After robust stakeholder engagement, the Commission will be in a well-informed position to issue a revised rule that supports consumer control and choice and allows businesses to honor customers' wishes.

B. The Rule's Overly Broad Language Should be Clarified and Narrowed

The Rule's expansive language coupled with its presumption in favor of universal revocation could capture in its scope all types of communications not intended to be covered under the Rule.

Enterprising and creative plaintiff's attorneys could exploit these ambiguities to target communications that consumers and employees actually want to receive.

1. Employment-related messages

Employment-related messages are one category of communications that consumers may be interested in receiving that would be inadvertently lost under the Rule's flawed universal revocation approach. Employers, including retail employers, may use robotexts/robocalls to inform prospective candidates about job openings, interview schedules, and application status updates. This efficient communication method keeps candidates informed and engaged over the course of the hiring process and reduces the chance of missing job recruitment and application window opportunities. Employers also may utilize automated messages to reach current employees, including updates on company policies, training sessions, and important deadlines for benefit enrollment, performance reviews, and other HR-related matters. This proactive approach keeps employees timely informed and helps them manage their benefits and responsibilities effectively. Below are some examples of the potential creep with the scope of the current rule and its universal revocation approach that do not serve consumer protection goals.

> **Example 1**- Bill has applied for a job at a retailer and has opted to get updates about the status of his job application. He also uses the retailer's pharmacy to fulfill prescriptions for his family. Subsequently, Bill is offered employment at another company, so he wants to stop receiving text messages regarding his job application at the retailer. However, he wants to keep receiving notifications from the retailer's pharmacy.

> **Example 2** – Lindsey is a retail employee where she gets text message updates on work scheduling and job benefits. She also is a member of the retailer's loyalty program and has a credit card issued by the retailer. Lindsey decides to opt out of receiving benefit updates but wants to continue receiving communications on scheduling, loyalty rewards offers, and credit card alerts.

In Examples 1 and 2, the Rule's presumption in favor of universal revocation means that both Bill and Lindsey would need to *affirmatively* consent again to receive the desired communications - health and pharmacy communications for Bill's family and scheduling, rewards info, and credit card alerts for Lindsey.

2. Marketing Messages

A second area where the Rule's language is overly broad and can create confusion is where a customer has opted out of marketing messages and subsequently initiates an inquiry or engages with the retailer.

> **Example 3** – Sarah sends a text to a retailer's beauty consultant asking for advice about a beauty product. The beauty consultant responds with several recommendations and the

customer follows up with several questions resulting in multiple text responses from the retailer.

Example 4 - While shopping at a retailer, Paul sees a sign with a QR code for a discount coupon for his favorite wine. He clicks on the QR code, and the retailer sends him the discount coupon via text. Paul is able to save money on his total shopping purchase by using the coupon.

Example 5 – Michael is trying to log into his retailer loyalty account but has forgotten his password. As part of the retailer's standard security protocol to reset his password, Michael requests that a security code be sent via text message. The retailer sends the security code and Michael is able to change his password and log into his account.

In Examples 3-5, the retailer's text is a direct result of consumer-initiated action and engagement, and consumers clearly want and expect the retailer to respond. A retailer should not be constrained from doing so by a customer's prior consent revocation.

Given these common real world scenarios where a consumer could inadvertently opt-out of wanted communications, RILA urges the Commission to: 1) issue clear guidance that any employment/job related texts do not fall under the scope of the TCPA or the current Final Rule and any future revised rule; and 2) clarify that text replies sent to consumers in response to consumer-initiated inquiry or action are not covered under the scope of any prior revocation.

C. The Final Rule Limits Companies' Ability to Seek Clarity on Consumers' True Intentions.

Retailers work hard to gain and retain the trust and loyalty of their customers, including implementing systems to timely respond to consumers' wants and needs. A retailer that is viewed to be nonresponsive will quickly suffer damage to its brand reputation and lose customer loyalty. To foster strong customer loyalty and trust, retailers must be able to get clear feedback from their customers about the specific communications that the consumer wants to opt out of.

The Rule's presumption in favor of universal revocation is not logical and if maintained it will lead to unintended adverse consequences. A consumer's consent to receiving marketing information is entirely different than consent to get health and pharmacy or financial services notices. Customers are not likely to understand that by opting out of notices on loyalty coupons they are also opting out of pharmacy notifications about prescriptions refills and pickups. Similarly, most customers that intend to opt out of receiving package delivery tracking notifications are not intending to also opt out of credit card fraud alerts, payment reminders, or notifications about reaching credit limits. When a customer indicates his/her intention to stop receiving a specific type of communication (*e.g.,* loyalty program texts), it is much more likely the consumer intends to revoke consent for "all" communications of that specific type – not the entire range of communications a customer may receive from the retailer.

While the Rule does allow retailers to send a one-time confirmation/clarification text to customers asking if they intend to revoke consent for "all" communications, TCPA's 160 character limit for text messages does not allow retailers to provide consumers with adequate information in a clarification

text so they can make an informed choice. Even assuming for argument's sake that a customer understands the Rule's presumed universal scope of revocation, if they want to continue receiving specific types of communications, the Rule requires the consumer to affirmatively re-consent to each type of message for which they have previously consented. And, if a customer fails to respond to the clarification text and reconfirm their consent, the Rule requires retailers to cease sending all communications despite not having clear direction from the customer that this is actually what they intended.

As detailed above, consumers receive a wide range of information via text messages from retailers. The Rule's presumption in favor of universal revocation will result in consumers not receiving prescription notices with potential adverse health implications, fraud alerts which could have serious financial consequences, and dissatisfied customers not receiving their desired loyalty program benefits. These are just a few of the potential unintended adverse consequences of the Final Rule. Moreover, requiring consumers to repeatedly affirm their consent to messages they want imposes a tremendous burden on consumers and retailers alike.

III. Retailer Encourage the FCC to Make Changes to the Final Rule to Avoid Consumer Confusion and Potential Unintended Adverse Consequences

Despite some of its positive aspects, discussed further below, the Final Rule is fatally flawed and should be reconsidered. As part of the Commission's reconsideration, RILA urges the FCC to engage closely with all stakeholders, including retailers who have deep knowledge about consumer needs and the variety of communication methods companies use to try to meet those needs. Set forth below are some recommendations for how the FCC should modify the Final Rule to promote transparency and consumer control.

A. Any Revised Consent Revocation Rule Should Contain a Presumption Against Universal Revocation

The Commission should issue a new proposed rule that follows common sense logic. As detailed in the earlier unintended consequences examples, most customers that are opting out of text messages intend to revoke consent for a specific type of communication only and do not intend to end all future communications from a retailer. The FCC should recognize the intention of most customers and propose a new rule with a presumption *against* universal revocation to replace the current rule's presumption *in favor* of universal revocation. Flipping the presumption to be against universal revocation will accurately reflect the vast majority of consumers' intentions, avoid customer confusion and reduce unintended adverse consequences. Also, a presumption against universal revocation will eliminate the burdens imposed on consumers and retailers by the Final Rule by not requiring consumers to repeatedly reconfirm their consent to communications they want.

In addition, the FCC should eliminate the Final Rule's language requiring senders to treat a customer's failure to respond to a clarifying text as a universal revocation and indicative of the customer's intent to stop all future communication from the company. There are many reasons why a customer may not respond to a clarification text. Leading a busy life and not having the time or forgetting to respond are

some reasons. Another reason is that the customer may logically assume that his/her initial revocation request is adequate notice to the sender to revoke future communications of that type. By not responding to a clarification text asking if the consumer intends to stop "all" communications, a consumer may logically assume that all other types of communications will continue. Requiring retailers to infer customer intent and stop all future communications regardless of type will force companies to take an action which is directly contrary to what the customer wants. This will only serve to frustrate consumers and damage their trust in the retailer. Eliminating this language from a future rule will allow companies to have the opportunity to engage with customers to determine their actual intent.

B. A Revised Consent Rule Should Allow Senders Flexibility to Determine Consumers' Actual Intent

Retailers support transparency and giving consumers full control over the messages that they receive. Consumers that want to opt out of receiving all future communications from a company regardless of what type will still have options to do so. Retailers are exploring ways to ensure that consumers make an informed choice.

The Rule's text message character limitations make it impossible for companies to provide detailed information to their customers about their consent and impact of universal revocation. To address this issue, retailers are exploring a variety of creative methods to provide consumers with the information they need in a clarification text to make an informed choice. For example, retailers are looking for technological solutions that would enable the provision of a link in the clarification text which would direct a consumer to a company website that contains general information about the type of communications the company sends to its customers. Customers could then make an informed choice and choose to stop all communications from the company.

While the technology is not yet developed, retailers are hopeful that in the future they will be able to provide customers with personalized detailed information about the types of communications they have consented to and be able to present customers with a menu where they select specific communications they want to keep and which ones they want to stop receiving. The language of a revised rule should not be prescriptive and instead should provide companies with flexibility to develop innovative and creative methods of communicating important information regarding consent to communications and the impact of revocation to their customers.

C. RILA Recognizes and Appreciates Several Key Points in the Final Rule Which Should be Retained in a Future Revised Rule

While there are significant issues with the Final Rule that justify its withdrawal and re-proposal. we want to recognize aspects of the Rule that are beneficial and should be maintained. These provisions promote clarity, fairness, and efficiency in communications with consumers, and do not create undue burdens for industry stakeholders and avoid unintended adverse consequences for consumers.

1. **Providing a List of "*Per Se* Reasonable" Words Consumers Can Use to Revoke Consent to Communications Furthers our Shared Goal of Consumer Protection and Provides Clarity to both Consumers and Retailers**

RILA supports the Commission's inclusion of a standardized list of specific words deemed to be *per se* reasonable, which consumers can use to revoke consent via a reply text message. Specifically, RILA finds that using the words "stop," "quit," "end," "revoke," "opt out," "cancel," or "unsubscribe" via reply text message constitutes a reasonable and unambiguous means to revoke consent. A list of acceptable terms deemed *per se* reasonable facilitates efficient processing through automated text messaging systems. Likewise, this same list of words can be used in response to automated calls to revoke consent. The clearly enumerated list provides both regulatory certainty and guidance to retailers on acceptable consent revocation terms that comply with the rule, while also being readily understandable and discernible by the average consumer**.**

2. **The Commission's "Totality of the Circumstances" Analysis Promotes Fairness and a Reasonable Application of the Rule**

RILA and its members support the Commission's application of a "totality of circumstances" analysis in disputes involving alleged TCPA violations where the consumer claims to have revoked consent in a manner other than those deemed *per se* reasonable under the Final Rule. Such an approach ensures that the new rule will be applied fairly and reasonably, which benefits and protects consumers and senders of automated communications. This holistic and balanced review of an attempted consent revocation will also guard against bad actors that may look to exploit the TCPA's private right of action enforcement mechanism by revoking consent using intentionally vague, wordy and unconventional words in blatant attempts to "beat the system" to manufacture non-compliance claims.

Any future revision of and reissuance of the Final Rule should retain a "totality of circumstances" analysis in order to promote a balanced approach that protects consumers and avoid unnecessary burdens, confusion, or complexity.

3. **Retailers Support the Commission's 10-Day Period for Senders to Comply with Consumers' Consent Revocation**

RILA and its members also support the Final Rule's 10-day period for senders to comply with a consent revocation request and encourage the FCC to retain this timeframe in any revision of the rule. This structured timeframe allows retailers to efficiently process revocation requests through their automated systems, preventing potential backlogs and avoiding operational disruptions. The timeframe achieves a balance between consumer protection and operational necessity, serving both industry and consumers. Prompt adherence to the revocation within the 10-day period is aligned with retailers' commitment to transparency and building trust, brand loyalty and a high level of customer satisfaction.

D. Retailers Will Need Adequate Time After Publication of Any Future Revised Rule to Implement its Requirements

As detailed in Section II above, retailers engage with their customers on a wide variety of issues – pharmacy, credit card, e-commerce delivery and tracking, curbside pickup logistics and photos orders to name just a few. Each of these different lines of business or departments have systems that facilitate their engagement with customers. These systems are supported by third-party technology service providers (some of which are smaller service providers). Retailers and their third-party service providers will require time to integrate these systems and to develop and execute comprehensive and unified compliance programs. Therefore, retailers recommend that the Commission allow companies one year after publication of any final revised rule to implement its requirements.

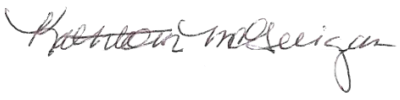
Retailers commend the FCC for the one year pause in enforcement of the Final Rule and strongly urge that the Commission take further action and initiate a new rulemaking to revise the Final Rule along the lines detailed above. The recommendations put forward by retailers would place consumers in control of messages they want to receive. Revising the Rule's presumption to be against universal revocation allows consumers to narrowly tailor their consent revocations. Senders will be able to assist consumers in making informed choices by creative and innovative use of technology. At the same time, the Commission should retain the positive consumer friendly aspects of the Final Rule in its future revised rule and give companies adequate time (one year from date of publication) to efficiently and effectively implement a new revised rule.

Conclusion

RILA members work hard to serve consumers and meet consumer expectations through important communications like robotexts and robocalls, which are crucial to the retailer-consumer relationship. RILA appreciates the opportunity to provide these comments on the FCC's *In Re: Delete, Delete, Delete* Docket, in connection with the FCC's TCPA Consent Order Final Rule, which intends to promote consumer protection and consumer choice in such communications. We would welcome an opportunity to discuss our feedback with the Commission.

If you have any questions or need any additional information, please contact Kathleen McGuigan, EVP and Deputy General Counsel, at kathleen.mcguigan@rila.org / (202) 869-0106 or Susan Kirsch, VP Regulatory Affairs at susan.kirsch@rila.org / (202) 866-7477.

Sincerely,



Kathleen McGuigan
EVP & Deputy General Counsel
Retail Industry Leaders Association